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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 462.

THE HENDERSON BRIDGE COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY

FILED MARCH 5, 1896.

(16,211.)

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1 COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the court of appeals, held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 15th day of January, A. D. 1896, Chief Justice Will S. Pryor and Joseph H. Lewis, J. H. Hazelrigg, and George Du Relle, associate judges, sitting.

HENDERSON BRIDGE CO., Appellant,
against
COMMONWEALTH OF KENTUCKY, Appellee.

Be it remembered that heretofore, to wit, on the 14th day of June, A. D. 1894, the appellant, The Henderson Bridge Co., by counsel, filed in the office of the clerk of the Kentucky court of appeals a transcript of record in words and figures following, to wit:

Franklin Circuit Court, April Term, 1894.

COMMONWEALTH OF KENTUCKY
against
THE HENDERSON BRIDGE CO.

Pleas before Hon. Jas. E. Cantrill, judge.

Be it remembered that on the 4 day of January, 1894, the plaintiff, The Commonwealth of Kentucky, filed the following petition herein, to wit:

(See next page.)

2 Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
HENDERSON BRIDGE CO., Defendant. } Petition.

The plaintiff, Commonwealth of Kentucky, states that the Henderson Bridge Company is a corporation incorporated under the laws of plaintiff and doing business as a bridge company between the city of Henderson, in Kentucky, and the Indiana shore, across the Ohio river, at Henderson, Ky., having also the ownership and possession of nine (9) miles of railroad connected with it in the State of Indiana and operated by the said defendant company.

The plaintiff states that between the 15th day of September and the 1st day of October, 1893, the said defendant company made and delivered to the auditor of public accounts a statement, verified by M. H. Smith, its president, giving its name and principal place of business, the kind of business in which it was engaged, the amount of capital stock, preferred and common; the number of shares in each; the amount of stock paid up and par and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months before the 15th day of September, 1893; the total

amount of indebtedness as appeared; the amount of gross or net earnings of income, including interest on investments and income from all other sources, for the twelve months next preceding the 15th day of September, 1893; the amount and kind of tangible
3 property in this State, and where situated, assessed or liable to assessment in this State, and a fair cash value thereof, estimated at the price it would bring at a fair, voluntary sale. A copy of said report is filed and made part of this petition as Exhibit "A."

The plaintiff further states that upon the receipt by the auditor of public accounts of said report that the board of valuation and assessment, consisting of the auditor, treasurer, and secretary of state, proceeded to value and assess the franchise of said corporation for the purpose of taxation and fixed its capital stock at the sum of $1,514,893.00 and its tangible property at the sum of $649,735.54, which tangible property they deducted from the total capital stock, leaving the sum of $865,157.46, at which sum said board of valuation and assessment fixed the value of the franchise of said defendant company.

Plaintiff further says that the rate of taxation for 1893 was 42½c. on the $100.00, and at this rate the taxation upon the franchise of defendant amounts to the sum of $3,675.91, no part of which has been paid, and the defendant fails and refuses to pay the same to the plaintiff.

Wherefore the plaintiff prays judgment against the defendant for the sum of $3,676.91, with damages, for its costs herein expended, for all proper relief.

WM. J. HENDRICK,
Att'y Gen'l.

4 Afterwards, at a court held on the 27th day of January, 1894, the following order was entered herein, to wit:

COMMONWEALTH OF KENTUCKY
vs.
HENDERSON BRIDGE COMPANY. } (Fiscal.)

Ordered that this cause be continued.

Afterwards, at a court held on the 16 day of January, 1894, the defendant, The Henderson Bridge Company, filed its answer herein. The plaintiff, The Commonwealth of Kentucky, also filed its demurrer to said answer.

Said answer is as follows, to wit:

(See next page.)

5 Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE HENDERSON BRIDGE COMPANY, Defendant. } Answer.

The defendant, for answer to the petition herein, says it is true that it is a corporation incorporated and organized under the laws

of the Commonwealth of Kentucky, but it derives authority from the Commonwealth of Kentucky only to build so much of the bridge as extends to the low-water mark on the Indiana side of the river. The defendant obtained from the State of Indiana important powers, rights, faculties, franchises, and privileges, hereinafter more specifically stated, by complying with the act entitled "An act supplemental to an act entitled *an* 'An act providing for the incorporation of companies formed for the purpose of constructing bridges for railway or common roadway purposes, or both, over rivers and streams forming the boundaries of the State of Indiana or a part thereof,' approved March 2nd, 1875;" which said act was approved April 8th, 1881, took effect from its passage, and is as follows:

"Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. That any corporation created by the laws of another State for the purpose of constructing a bridge across any river or stream forming in whole or in part the boundary between such other State and this State, shall have and enjoy within this State all of the rights, powers, faculties, franchises, and privileges
6 contained in the said act, to which this is supplemental, entitled 'An act providing for the incorporation of companies formed for the purpose of constructing bridges for railway or common roadway purposes, or both, over rivers and streams forming the boundaries of the State of Indiana or a part thereof,' approved March 2, 1875: Provided, that said corporation shall first file for record, in the office of the recorder of the county in which such bridge is proposed to be constructed a copy of its charter from such State and of the resolution of its board of directors accepting the benefits of this and the said act, signed by its president and attested by its secretary; and, provided, that such corporation shall, so far as it may exist and do business in this State, be subject to the laws of this State for the government of foreign corporations: Provided, further, that any bridge constructed and maintained under the provisions of this act shall be public highway and subject to use by all persons and corporations electing to use the same for any purpose or purposes to which the same is adapted, subject to such reasonable rules and regulations as the corporation owning such bridge shall prescribe; and that the rates of toll over such bridge shall be reasonable and uniform to all persons and corporations using the same; provided, that nothing in this act contained shall be deemed or construed to be a limitation or restriction of the right of the General Assembly to alter or amend the charter of any corporation or company constructing any bridge under the provisions of this act."

7 Defendant alleges that its president, in accordance with said act, filed for record in the office of the recorder of the county of Vandenburg, in said State of Indiana, in which said county said bridge was proposed to be and was constructed, a copy of its charter from the State of Kentucky, and also a copy of the resolutions of its board of directors accepting the benefits of the act

hereinbefore quoted, and said resolution was signed by the president and attested by the secretary of this defendant.

The defendant says that on the 16th day of April, 1881, at a meeting of its board of directors duly called and held, the following resolutions were unanimously adopted:

Resolved, That the board hereby accept the benefit of an act of the General Assembly of the State of Indiana approved April 8, 1881, and entitled "An act *of* supplemental to an act entitled 'An act providing for the incorporation of companies formed for the purpose of constructing bridges for railway or common roadway purposes, or both, over rivers and streams forming the boundaries of the State of Indiana or a part thereof,'" approved March 2, 1875, and also of the act to which the said entitled act is supplemental.

Resolved, That the president of this board be and he is directed to cause a copy of the foregoing resolution and of the charter of the Henderson Bridge Company to be filed with the recorder of Vanderburg county, State of Indiana, for record, as required by the above-entitled act.

The defendant says that by the terms of the act of April
8 8th, 1881, above quoted any corporation created by the laws of another State for the purpose of constructing a bridge crossing a river or stream forming in whole or in part the boundary between such other State and the State of Indiana should have and enjoy within the State of Indiana all the rights, powers, faculties, franchises, and privileges contained in the act to which said act of April 8th, 1881, is a supplement, said original act being entitled, as aforesaid, "An act providing for the incorporation of companies formed for the purpose of constructing bridges for railway or common roadway purposes, or both, over rivers and streams forming the boundaries of the State of Indiana or a part thereof," approved March 2nd, 1875.

The defendant says that by said original act approved March 2, 1875, and entitled as above — is declared that any such corporation, if they deem it best, may construct and own, as an extension of such bridge and in connection with it, a firm and substantial causeway, to be made of trestle-work or solid embankment, or part trestle-work and part solid embankment, across the low bottoms of any such river or stream.

By section 3549 of said act it is provided as follows:

Officers and powers.—3. The corporation shall be capable of sueing and being sued, pleading and being impleaded, defending and being defended, answering and being answered unto in any court of competent jurisdiction.

Said corporation shall have all the rights, privileges, and powers incident to corporations, and may have and use a common seal, with power to alter or change the same at pleasure.

9 By section 3553 of said act it is provided as follows:

Railway tracks.—7. Said corporation shall have power to construct a railway, with one or more tracks over such bridge and he embankments appertaining thereto, and to connect the same

with other railway tracks, and shall have the right to fix and alter at pleasure the rates of toll for all persons and property passing over said bridge and railway tracks connected therewith, whether on foot or horseback, or in vehicles of any kind, or in cars propelled by steam or any other power.

For the purpose of collecting tolls, toll-houses may be erected and maintained at the said bridge, near to it or on the approaches leading to it.

By section- 3554, 3555, 3556, and 3557 it is provided as follows:

3554. Connecting with railways.—8. The said corporation shall also have full power and authority to connect the line of railway over said bridge by continuous line of railway, in such manner and upon such route and terms as may be deemed most expedient with any other line of railway whatever, and to maintain, use, operate, and control the said connection, when completed and charge and receive tolls for the use thereof.

3555. Power to borrow money.—9. The said corporation shall have power to borrow money to construct and operate the work above indicated at such rate of interest, not exceeding ten per cent., for such times, in such places, and to such amounts as the
10 directors may deem best, and may execute bonds or other evidences of indebtedness therefor, and secure the payment of the same by mortgage or pledge of the said work hereby authorized to be constructed, or any part thereof, and sell and dispose of the said bonds or other evidences of indebtedness upon such terms and discount as may be agreed upon.

3556. Railroad companies consolidation.—10. The said corporation shall have the right to contract, at any agreed sum or rate with any railroad company now existing or which may hereafter be incorporated, for the annual use of said bridge by the cars or engines, or for the use of said railroad company; and any such railroad company is hereby authorized to subscribe for the stock or to purchase the bonds issued by said bridge company, and is further authorized to make all such guarantees as to the net earnings of said bridge, over cost of operation and repair, as may be agreed upon by the two contracting companies.

Such corporation shall have authority, by a vote of a majority of the directors, to unite and consolidate its franchises business, and interest with those of any other bridge company incorporated under the laws of any other State, and having authority to construct a bridge over the same stream at the same point.

3557. May acquire real estate.—11. Any corporation under the provisions of this act shall be capable of holding using or converting any property or estate, real or personal that may by them be deemed necessary or convenient for the site of said bridge,
11 its piers, abutments, toll-house, and for suitable avenues leading to the same, and also such other and further real estate as may be required for any purpose authorized by this act, and to take real property therefor. Such companies may have the benefit of the writ of assessment or damages.

The defendant says that it was authorized and empowered to

build its bridge across the Ohio river, and it did build its said bridge over and across said river under the authority and permission of the Congress of the United States and in accordance with the terms of an act entitled "An act to authorize the construction of bridges across the Ohio river and to prescribe the dimensions of the same, approved December 17th, 1872," as amended by an act of Congress entitled "An act *of* supplementary to an act approved December, 1872, entitled 'An act to authorize the construction of bridges across the Ohio river and to prescribe the dimensions of the same,' approved February 14th, 1885."

The defendant says under this act it derives and constantly exercises important privileges and franchises from the Federal Government. It says that by the sixth section of the first act mentioned it is declared that any bridges constructed under this act and according to its limitations shall be a lawful structure and shall be recognized and known as a post-route, and the defendant says that it is impossible for it to use the franchises granted to it by the State of Kentucky except in conjunction with the franchise and rights granted by the State of Indiana and the Government of the United States; in other words, it requires the use of the franchises
12 granted by the three separate sovereignties aforesaid in order to use and operate the bridge or to make any use of the franchise granted by the State of Kentucky, and without the franchises granted by the other sovereignties as aforesaid the franchise granted by Kentucky is absolutely valueless. The defendant therefore denies the right of the State of Kentucky to levy a tax upon the franchise of the defendant corporation, and state- that when it does it not only taxes the franchise granted by the State of Kentucky but the franchises and rights granted by the State of Indiana and the Government of the United States. The defendant pleads and relies upon the protection granted by the Constitution and laws of the United States against the tax assessed and levied and attempted to be collected in this suit, and alleges that the Congress of the United States has never given its consent to the taxation of said franchise; that no attempt has been made to separate or value and tax separately the franchise granted by Kentucky, and such a separation is impracticable and impossible for the reason above stated.

Par. 2. The defendant says that its bridge between the city of Henderson and the State of Indiana is used entirely for transporting interstate business, transporting passengers and freight between the States of Indiana and Kentucky. The defendant therefore insists and alleges that the imposition of the tax by the State of Kentucky upon the franchise of the defendant corporation is a tax upon its right to do interstate business and is an unlawful
13 burden upon and an attempt upon the part of the State of Kentucky to regulate commerce between the States, in violation of that provision of the Constitution of the United States which confers power upon Congress to regulate commerce between the States.

Par. 3. For further answer defendant says that it constructed

and owns the bridge between Henderson, Ky., and Indiana, including the Kentucky approach and Indiana approach, consisting of a railroad 9.46 miles in length in Indiana, and twelve hundred and thirty feet of the bridge proper extends to the north beyond low-water mark and into the State of Indiana. Defendant says that through inadvertence and mistake the report filed with the auditor and signed by defendant's president stated that the surplus fund of defendant amounted to $411,655.47 and the value of all its other assets amounted to $3,116,361.73. Defendant says that the blanks in said report were filled up and made out by the book-keeper of the company, who made great errors prejudicial to defendant in stating the amount of the surplus fund and the amount of the other assets, the same being stated far in excess of that authorized by the facts. Defendant says that of the sum of $411,655.47, stated to be the amount of surplus fund, there is included an item of $79,579.02, which, though standing on the books as an asset, is in no sense an asset. That sum simply represents the amount expended in constructing the bridge and purchasing real estate in excess of the amount realized on the bonds of the company. Defendant further says that of the amount stated as the surplus fund $191,020 is represented by bonds of defendant company, which have been
14 purchased by it and placed in its sinking fund, which are owned by it and, being its own obligations held by it, are not the subjects of taxation. Defendant further says that the amount of $3,116,361.73 was made up from the face of the defendant's books, showing the cost of the Henderson bridge and its approaches. Now, the defendant alleges that large sums appear on said books as representing the cost of the bridge which did not advance or enhance the value of the bridge one cent nor the value of defendant's franchise. Hundreds of thousands of dollars were expended in various ways which were entirely lost and added nothing to the value of the structure. In the opening of quarries and in the deterioration of plant largely over $100,000 was lost, no part of which is represented in value in the structure or the franchise of the defendant. Defendant further says there was included as an asset on these books the par value of the stock, the total of which was $1,000,000. This defendant did not receive anything for said stock, but the same was given away with the bonds as a bonus to the subscribers, and no part of that $1,000,000 thus on the books as an item of expense ever entered into said structure or advanced it in value one cent. The defendant says that bonds to the aggregate amount of $2,000,000 were issued and sold at eighty cents on the dollar, and there was charged as an item of expense the interest on these bonds during construction, amounting to $119,731.62, and for discount on the bonds used in construction $350,425.41, although no part
15 of either of said sums is represented in the bridge or adds a single cent to the value of the bridge structure or the franchise of the defendant. Defendant further says that there is included upon the face of the books as a part of the expense the total cost of building the structure in the State of Indiana and beyond the jurisdiction of Kentucky, amounting to a very large sum, the

exact amount not now known. The defendant says that the cost alone of building the trestle in Indiana, which is stated separately on the books, amounting to $123,710; and defendant further says that the State of Kentucky is not entitled to tax, or to consider in assessing or taxing, any part of the structure beyond its borders, within the State of Indiana and subject to the jurisdiction of Indiana and the revenue laws of that State. The def't says that the errors above described were corrected by affidavits, which were read by the board of valuation and assessment before the assessment sued on was made.

The defendant says that by the laws of this State the exclusive right to assess and fix the value upon the tangible property of the defendant situated within Kentucky is conferred upon the assessor of Henderson county, Ky., as regulated by and subject to the control of the board of supervisors of that county. Defendant further alleges that the State of Kentucky by its act had undertaken to assess the value of the franchises of all its corporations and has fixed and determined a means of ascertaining the value of the
16 franchise to be taxed; that said valuation is by said act to be arrived at by a board of valuation and assessment composed of the State auditor, State treasurer, and secretary of state.

This board is required to ascertain the real value of the capital stock, and if that value shall exceed the assessed value of the tangible property, the sole jurisdiction to assess which is conferred upon the local board as aforesaid, then the difference between the value of the tangible property and the value of the capital stock is to be set down as the value of the franchise, to which the current rate of taxation shall be applied. The defendant says that its franchise from the State of Kentucky alone is absolutely worthless, but that whatever value its stock represents is derived from the whole of defendant's property in Kentucky and Indiana and the right to operate and exercise the franchise granted by Kentucky and Indiana and the United States Government.

Defendant further says that the said board of valuation and assessment have assessed the defendant's capital stock at a value of $1,514,893 and deducting therefrom the sum of $649,735.54, which is the assessed value of the tangible property in Kentucky as fixed by the local board of supervisors, and the assessor has set down the difference, to wit, $865,157.46, as the value of defendant's franchise. The defendant says that said board in arriving at said value did not undertake to determine either the market value or the real value or observe the par value of defendant's stock, but ignored them all on the erroneous construction of the statute
17 that it was bound by none of them, but might enquire into the value of all the property for purposes of taxation on inspection of the real market or par value of the stock. Defendant alleges that its stock is not now nor has it within twelve months last past been worth exceeding ninety cents on the dollar. The said stock represents, as hereinbefore stated, not only the value of defendant's property within the State of Kentucky but the value of defendant's property, which is a material part thereof, in the State

of Indiana, and also the value of the franchise exercised by the defendant from the State of Indiana, the State of Kentucky, and the United States Government.

The defendant says that the true value of said stock is not exceeding $90 per share, or, in the aggregate, $900,000; that if the State of Kentucky may tax the franchise at all it can only tax such proportion of the value of its stock as the property within the State of Kentucky bears to the property within the State of Indiana. Defendant further alleges that if proper credit be given for the value of the property within the State of Indiana the value of the stock applicable to property within the State of Kentucky would not exceed the assessed value of the tangible property in Kentucky, to wit, $649,735.54, but the defendant says that the tax which is sought to be imposed by the State of Kentucky, the county of Henderson, and the city of Henderson, amounting in the aggregate to $25,375.34, and the taxes imposed by the State of Indiana, amounting to $8,858.56, making the total taxation levied against
18 this defendant $34,233.90, practically amounts to confiscation of the defendant's property and amounts to more than fifty per cent. of the income of the defendant after paying the interest upon its bonds.

Wherefore defendant prays to be hence dismissed with its costs and for all proper relief.

HELM & BRUCE,
Attorneys for the Defendant.

M. H. Smith on oath says that he is the president of the defendant, and he believes the statements of the foregoing answer are true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith this — day of January, 1894. My commission as notary public expires on the 10 day of July, 1896.

THOS. B. HARRISON, JR.,
Not. Pub. Jeff. Co., Ky.

19 Said demurrer to the said answer is as follows, to wit:

Franklin Circuit Court.

COM. OF KY., Plaintiff,
vs.
HENDERSON BRIDGE CO., Defendant. } Demurrers.

Now comes the plaintiff and demurrs generally to the answer of the defendant filed herein because said answer does not state facts sufficient to constitute a defense.

Wherefore, &c.

And the plaintiff demurrs to the first, second, and third paragraphs of defendant's answer because it says no one of said para-

graphs state- facts sufficient to constitute a defense to plaintiff's petition.

Wherefore, &c.

WM. J. HENDRICK, *Att'y Gen'l.*

20 Afterwards, at a court held on the 10 day of April, 1894, the following order was entered herein, to wit:

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
HENDERSON BRIDGE CO., Defendant.

The demurrer of plaintiff to second paragraph of the answer of the court is sustained; to which defendant excepts; overrules said demurrers to the balance of the answer; to which the plaintiff excepts.

Wherefore came the plaintiff and filed its reply to the answer of the defendant; and thereupon came the defendant and filed its demurrer to the plaintiff's reply; and the court, having considered said demurrer, overrules the same; to which the defendant excepts.

Ordered that the affirmative matter of said reply stand traversed of record.

21 Said reply is as follows, to wit:

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
HENDERSON BRIDGE CO., Defendant.
} Reply.

For reply to the answer of the defendant filed herein the plain- says that its board of valuation and assessment in fixing the value of the franchise of the defendant first deducted from the whole amount of property found by them to be the property of said bridge Co., viz., $2,900,000.00, the value of the railroad in the State of Indiana as assessed by the authorities in that State at $627,660.00, which left the value of the bridge property for assessment in Kentucky $2,272,340.00, and as one-third ($\frac{1}{3}$) of this property lay beyond low-water mark on the Indiana side of the river, as shown by the report of the engineer of the property, giving the distance in Kentucky and Indiana in feet, the said board of valuation and assessment caused a further deduction of one-third ($\frac{1}{3}$) of said $2,272,340.00 to be made, viz., $757,446.00, from the valuation given, but fixing the value of the franchise in Kentucky, which was then fixed at the sum of $1,514,894.00. The franchise assessment as fixed by said board of valuation and assessment was only an assessment of the franchise as exercised in this State, and does not embrace any property of the corporation outside of this State.

Wherefore plaintiff prays as in its petition, and for all general and proper relief.

WM. J. HENDRICK, *Att'y Gen'l.*

22 Said demurrer to the reply is as follows, to wit:

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY
vs.
HENDERSON BRIDGE CO.

Defendant, Henderson Bridge Company, demurs to the reply of the plaintiff because *the* does not — facts sufficient to avoid the answer or support a cause of — against the defendant and is insufficient in law.

HELM & BRUCE, *For Def't.*

23 Afterwards, at a court held on the 17 day of April, 1894, the following judgment was entered herein, to wit:

COMMONWEALTH
vs.
HENDERSON BRIDGE CO. (Fiscal.)

This cause coming on to be heard, *and* the court, being sufficiently advised, adjudges that the plaintiff, The Commonwealth of Ky., recover of the defendant, The Henderson Bridge Company, the sum of $595.00, being 42½ cents on a valuation of $140,000.00, at which figure the franchise of said corporation is fixed, and also recover thereon the sum of $59.50, penalty; to all of which the defendant, The Henderson Bridge Co., excepts and prays an appeal to the court of appeals, which is granted.

The plaintiff excepts and prays an appeal to the court of appeals, which is granted.

Afterwards, at a court held on the 17 day of April, 1894, the following order was entered herein, to wit:

COMMONWEALTH
vs.
HENDERSON BRIDGE CO. (Fiscal.)

The defendant filed a motion and grounds for a new trial herein; which motion was overruled; to which the defendant excepts. Thereupon the defendant tendered a bill of exceptions herein, which was examined and approved by the court and ordered to be filed and made a part of the record without being spread upon the order book.

24 Said motion and grounds for a new trial *is* as follows, to wit:

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Pl'ff,
vs.
HENDERSON BRIDGE CO., Def't. } Motion & Grounds for New Trial.

Now came the defendant, The Henderson Bridge Co., and moved the court to grant it a new trial herein, because the finding of the court is contrary to the evidence and is unsupported by the law and contrary thereto.

J. P. HELM,
Att'y for Def't.

25 Said bill of exceptions is as follows, to wit:

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Pl'ff,
vs.
HENDERSON BRIDGE CO., Def't.

L. C. NORMAN, being called for the plaintiff, answered as follows in response to interrogatories:

By Attorney Gen'l HENDRICK:

Q. State your official position.

A. Auditor of public accounts for the State of Kentucky.

Q. In that capacity did you act as a member of the board of assessment and valuation in the year 1893 for the Commonwealth of Kentucky? State who else constituted that board and your method of assessment of franchises.

A. I am a member of the board of valuation and assessment—I believe by provision of law chairman. The secretary of state, Capt. Headley, and Maj. Hale, treasurer, are the other members of the board.

Q. Especially with reference to the assessment of the franchise of the Henderson Bridge Co., state to the court exactly how that assessment was made.

A. In the first place, I prepared, in accordance with my understanding of the provisions of law, a blank form for corporations to report on for the payment of franchise tax.

26 Q. Is this report filed here made upon one of those blanks?

A. Yes. The form was prepared by me, and the substance of the blank was taken as literally as possible from the provisions of the law. The blank was sent to the chief officer of the corporation, whom I assumed to be Mr. M. H. Smith, its president, and was filled out and returned by him to me at my office, in the city of Frankfort. Some time after the report had been received I convened the board, and the other two members met with myself in my office, and we proceeded to fix the value of the franchise of the bridge company under that report.

Q. Upon the fixing of that valuation by the board did you com-

municate to the president of the bridge company the result of the board's work?

A. The board agreed, from the information before them, upon what they believed to be the proper valuation of the franchise and notified Mr. Smith.

Q. State exactly how you arrived at what the board considered the valuation of that franchise.

A. I will say here that the board never reaches a final conclusion until after they give the corporation 30 days in which to appear and make complaint if it does not think we have arrived at a correct valuation. After fixing what we conceived to be the fair value of the property we notified Mr. Smith, and they then filed some affidavits and made some complaint about the officer who had prepared their report and alleged that he had made some mis-
27 take, and that he had carried forward on his books as assets or property of the corporation all the expenditures made in connection with the building of the bridge. In other words, he had given us the face value of the ledger. When he stated that they had $411,655.49 of surplus, for instance, he did not tell us that a large part of that was not properly an asset. When he said they had $3,116,361.73 of other assets he did not state that part of that money had been expended in construction of the bridge that was practically worthless to them. These affidavits referred to are a part of the records of my office. I brought them here with me.

Q. After hearing that, what was the conclusion of the board?

A. It was that the whole property of the Henderson Bridge Co. was worth something like $2,900,000. They had stated their assets to be a little over 3,528,000, but we reduced the figures upon these affidavits from what we originally intended to put them. Then we made a reduction on account of the value on the railroad in Indiana. We had a sworn statement of one of the officers as to what they were taxed at on the Indiana side. I also had the official report of the auditor of Indiana, in which he said that they were taxed *on* $627,660 — 9.46 miles of road at $66,000, making $624,360; $3,250 for .65 of a mile of siding at $5,000 a mile, and $50 for improvements on right of way. Then we had a sworn statement as to the length of the bridge in Indiana made by the chief engineer of the road, and the length of the bridge in Kentucky, and we
28 made a strict mathematical calculation as to the proportion of the bridge located in Kentucky, and based our figures upon that. After fixing the entire valuation of the corporation at $2,900,000, we took from that the 9½ miles of railroad (about) which they had in Indiana. Although they had stated it at about $250,000, we deducted $627,660, because it was taxed on that sum in the State of Indiana. After deducting that, then we arrived at what we thought the value of the bridge proper, after deducting the value of the railroad, and from that we took the value of the bridge in Indiana, and from the remainder the assessment of tangible property made by the assessor of Henderson county, which left $865,157.46 as the value of the franchise. To state it again, we first took from the value of the whole property as found the value of the

railroad property in Indiana, because that was assessed in Indiana at $627,660. We took that from it in order to arrive at the value of the bridge proper. Then we took from the remainder that part of the bridge lying in Indiana, and from that remainder the tangible property which had been assessed in Henderson county.

Q. That is, you assessed it at $1,514,893?

A. Yes; I do not want to make any argument to the court, but in determining what should be the proper mode of assessing this bridge I took all the law and construed it as well as I could. I know that it is not as clear or as well written as it might be,
29 but I understand that the franchise of a corporation under that law means its intangible property. It says so, I think, as clearly as it could be stated, by taking first article of the revenue law and construing it and comparing it with the second. It directs the board to fix the value of the capital stock in order to determine the value of the franchise; but I do not think that was ever meant to limit us to what the stock might sell for on the market, because a corporation might have a bond of $100,000 and a capital stock of $100,000 and the stock be worth nothing, yet the property that they had obtained upon the bond worth $100,000. I think we are required to fix the value of the capital stock for taxation from all the facts we can get. I do not think it is meant to limit us to the market value of the stock—the mere price it might be sold for within the twelve months. I do not consider that we should take that as a cast-iron rule for fixing the assessment. I take it that in fixing the value of the capital stock we have a right to take all the matters connected with it into consideration and ascertain the true value of the property as well as we can, and then, when we find the assessment of the tangible property made under oath by the assessor, we have only to deduct that from the value of the whole property which we have found, and we have arrived at the value of the intangible property, which is the franchise. We pursued that method in this case. They said their stock was only worth 90 cents on the dollar. Why was it only worth that? The company's statement of earnings for the year showed that they were suffi-
30 cient to pay six per cent. on $2,000,000 of bonds, to carry $21,000 to sinking, fund, and still leave a net surplus of $76,072.20, a sum more than sufficient to pay a 7 per cent. dividend on their stock of $1,000,000. They said they had a surplus of $411,000, and other assets amounting to $3,116,000; yet that million of stock was only worth 90 cents on the dollar, according to their view. When these bonds are discharged—paid off—the stock will be worth what we say it is, and it is worth that now for the purpose of taxation, because it has the property behind it.

Cross-examined.

By Mr. HELM:

Q. Your board undertook to find not the market or the real or the par value of the stock, but to ascertain the value of all the prop-

erty for the purpose of taxation in order to fix the value for taxation?

A. Yes.

Q. If this mortgage had been $4,000,000 instead of $2,000,000 and the stock had not been worth a single cent to the holdor, your valuation would have been on the same principal?

A. In cases where we have found the stock had no market value, the corporation still exercising a valuable franchise, we have felt bound to fix a value for taxation.

Q. You mention a case where the stock has no market value. I ask you would your valuation upon the principles followed
31 by your board have not been precisely the same even if we could have shown as a business proposition that the stock had no real value, in view of the incumbrance upon the property.

A. I could hardly conceive of a case in which the stock would have no real value, if they were exercising a franchise in the State, because the possibilities of the future would make it valuable.

Q. In order to get the question fairly before the court, your board proceeded exactly upon the principles alleged in this answer, ignoring the real market or par value of the stock and aiming to arrive at the value of the whole property for the purpose of taxation?

A. No; you originally filed your statement that you had $1,000,000 of stock and $2,000,000 of bonds, but you filed affidavits showing your stock had sold for only 90 cents. We added the $900,000, the value of the stock, to the $2,000,000 of bonds and thus arrived at the valuation of $2,900,000, and determined upon that as the value of the capital stock for the purposes of taxation. That is about the only issue there is in it.

The COURT: Take a piece of paper and figure a case.

The ATTORNEY GENERAL: We have that already done, your honor.

The WITNESS: They say in their report that they have
32 $1,000,000 of common stock, but do not therein give any sales; say they do not know the real value of the stock or the highest price at which sold in the twelve months before. They say that the par value of the stock is $1,000,000; then they report a surplus of $411,655.47, and other assets $3,116,361.73, making a total of a little over 3,528,000 of such assets. They say their gross earnings or income amounted to $269,072.21; income from all other sources, $8,000; total, 217,072.21; less interest on bond-, $120,000; less sinking fund, $21,000; net profit, $76,072.21. So that you see here the corporation paying $120,000 interest on $2,000,000 of bonds, putting $21,000 into a sinking fund, and with a net profit upon the operation of the bridge of $76,072.21, which was over 7 per cent. on $1,000,000 of stock. They said their tangible property was $649,735.54, and that is the amount they are assessed at in Henderson county. When we undertook to make the figures they had in the meantime filed this affidavit of Mr. Green that the stock was only worth 90 cents on the market, and yet their profits were $76,072.21, with $21,000 in the sinking fund

after paying interest on the bonds. I think our first intention was to tax them on the basis of $3,000,000, but after we got that affidavit and other affidavits that related largely to this surplus fund of $411,000 and other assets of $3,116,000, that these were simply the face of their records, we agreed to just regard their capital stock as being worth $900,000 and their bond- as worth $2,000,000. Adding the two together, we have the total of $2,900,000 as the value
33 of their whole property as fixed. We settled upon that sum as the whole value of the Henderson Bridge Company. From that we took, first, the amount of the assessment on 9.46 miles of railroad in Indiana, at $66,000 per mile, with $3,250 for .65 of a mile of siding, at $5,000 a mile, and $50 for improvements on right of way. We took that from the $2,900,000. Then we deducted for so much of the bridge as was in the State of Indiana. We took that from the report of Mr. Montfort, the chief engineer. The statement made by the president says, "1,230 feet of the bridge is in the State of Indiana and it is connected with the South East & St. Louis railway by a connecting railroad 9.46 miles in length." We got the number of feet in Kentucky, but I do not see the paper which gave it. I think the proportion was almost exactly $\frac{2}{3}$ in Kentucky and $\frac{1}{3}$ in Indiana. So, after deducting the $627,660 which was taxed in Indiana, we took $\frac{2}{3}$ of the remainder as liable for taxation in Kentucky, and from that took the assessment of tangible property in Henderson county, the remainder being franchise value of $865,157.46.

By Mr. HELM:

Q. Will you look at this report and say whether or not if you deduct the amount there contained in the report, viz., $411,655.47, from the amount of liabilities, viz., $3,528,016.73, the result of other assets, $3,116,361.73, does not remain?

A. Yes. I understand that we did not make such deduction. I will say that I believe that upon the face of that report we
34 could have very justly taxed you more. We did not contend for that $411,000 of surplus, because of the amended statements received about it, although you swore you had $411,000 of surplus.

Q. By mistake?

A. Yes.

Q. The amount set down for other assets, you were advised how that was arrived at?

A. Yes.

Q. And that a great part of it did not add to the value of the bridge?

A. Yes.

Q. For instance, there were several hundred thousand dollars of charges embraced in this which was simply the loss upon the sale of the bonds?

A. There was no controversy about that. We did not tax you on that.

By the COURT:

Q. This tangible property is assessed $649,735.54; deducted from $1,514,893.00 leaves $865,157.46. That you found the value of the franchise?

A. In Kentucky; yes.

Q. The State collects tax on the $649,000 of tangible property?

A. Yes.

Q. What I would like to know is, by what process of figuring or reasoning the franchise is made to be worth
35 more for the purpose of taxation than the tangible property?

A. I do not want to argue with your honor, but I can illustrate that. Take the case of the Frankfort Gas Co. They pay on a franchise of $60,000 and are only assessed on their tangible property at $50,000. I expect $50,000 is a high assessment on this company's tangible property. They pay, nevertheless, on an assessment of $110,000, $60,000 of which is for franchise, without saying a word, because their dividends are reasonable and fair on that basis. Their exclusive right to make gas in the city of Frankfort makes it a valuable property. The engines, mains, street lamps, &c., do not amount to very much—$30,000 would, perhaps, be a liberal assessment on them—yet the company is assessed at $110,000, and pay on a $60,000 franchise assessment without any contention at all. Take the case of the Louisville Street R'y Co. Two or three years ago, I think it was, they paid taxes on $14,000. Afterwards it got up to $700,000—somewhere along there—and we now tax them on over $3,000,000, and they pay the tax without a word. Their franchise is the difference between $3,150,000, the total amount of assessment, and the assessment on tangible property of $863,000. Their right to operate in the city of Louisville is worth $2,286,000. I would like to show you some figures. We could not find that the stock had any value. They had $5,000,000 or $6,000,000 of bonds, but we could not ascertain what the stock had sold for. We fixed the value of their property at $3,150,000, as said above, of which
$863,000 was the amount, after the per cent. was added, for
36 assessment of tangible property, making $2,286,000 as the value of their franchise, and they pay without a word. That leaves the intangible property the franchise. The intangible property of a corporation and the franchise mean one and the same thing. I could find other instances of the same sort, some of them where the stock would not be shown to be worth a dollar.

(By the COURT:)

Q. In making this assessment, are you not compelled under the law to fix a value on the entire capital stock?

A. Yes; for the purpose of taxation. That is all we fix it for, to determine how much tax is to be paid. The assessor is required to fix a value upon your farm, and it is upon the same principle.

(By the COURT:)

Q. Upon this basis, what was the value of that stock?

A. I say it is worth $2,900,000 necessarily. There is no question about it, I think. With that $1,000,000 of stock they go upon the market and issue $2,000,000 and get the money on it, and putting the $1,000,000 and $2,000,000 together gives $3,000,000 of capital, and they are able to pay interest on the $2,000,000 and have a large sum over for sinking fund and profit. Their stock is surely worth more than $900,000, as they claim.

And this being all the evidence heard, the court rendered the following judgment:

37 Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Pl'ff,
vs.
HENDERSON BRIDGE CO., Def't. } Judgment.

This cause coming on to be heard, and the court, being sufficiently advised, adjudges that the plaintiff, The Commonwealth of Kentucky, recover of the defendant, The Henderson Bridge Co., the sum of $595.00, being 42½ cents on a valuation of $140,000, at which figure the franchise of said corporation is fixed, and also recover thereon the sum of $59.50 penalty; to all of which the defendant, The Henderson Bridge Co., excepts, and prays an appeal to the court of appeals, which is granted.

The plaintiff also excepts, and prays an appeal to the court of appeals, which is granted.

38 Thereupon the defendant moved the court to grant it a new trial upon written grounds filed; and the court, having considered said motion, overruled same; to which the defendant excepts.

It is therefore ordered that this bill be signed, sealed, and delivered as the manner is, but not spread at large upon the orders of the court.

JAMES E. CANTRILL, *Judge.*

STATE OF KENTUCKY,
County of Franklin, } *sct:*

I, Thos. B. Ford, clerk of the Franklin circuit court, do certify that the foregoing 38 pages contain a true, perfect, and complete transcript of all the orders, pleadings, and proceedings in the case mentioned therein, taken from the records of my said office.

Given under my hand as clerk aforesaid this the 29 day of May, 1894.

THOS. B. FORD, *Clerk.*

39 Upon the transcript filed as aforesaid the appellant endorsed thereon and filed therewith the following statement:

Kentucky Court of Appeals.

HENDERSON BRIDGE CO., Appellant,
vs.
COMMONWEALTH, Appellee.

The judgment appealed from is on page 23, and was rendered on the 17th day of April, 1894; the appeal granted by the court below. No process desired.

HELM & BRUCE,
Att'ys for Appellant.

Afterwards, at a court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 25th day of October, A. D. 1894, the following order was made:

Franklin.

HENDERSON BRIDGE CO.
vs.
COMMONWEALTH.

Ordered that this case be continued for oral argument.

Afterwards, at a court of appeals held as aforesaid on the 16th day of March, A. D. 1895, the following order was made:

Franklin.

HENDERSON BRIDGE CO.
vs.
COMMONWEALTH.

This cause, coming on to be heard, was argued by W. J. Hendrick for appellee and Jas. P. Helm for appellant and submitted.

40 Afterwards, at a court of appeals held as aforesaid on the 25th day of May, A. D. 1895, the following judgment was entered:

HENDERSON BRIDGE CO., Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.
} Appeal from the Franklin Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erroneous. It is therefore considered that said judgment be affirmed on the appeal of the Henderson Bridge Co. and reversed on the appeal of the Commonwealth and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost expended herein.

On the same day and at the same time, to wit, May 25, 1895, the said court delivered the following opinion:

Kentucky Court of Appeals, May 25th, 1895.

HENDERSON BRIDGE COMPANY, Appellant, *vs.* COMMONWEALTH OF KENTUCKY, Appellee.	Appeal from the Franklin Circuit Court.

Opinion of the court delivered by Judge Grace.

This was an action filed in the Franklin circuit court by the Commonwealth of Kentucky against the Henderson Bridge Company, seeking to recover of defendant the sum of $3,675.91, the amount of taxes claimed to be due and payable to the State by said company on its franchise as a corporation created by the
41 laws of Kentucky, its property being located in the State of Kentucky, for and during the year 1894, under a valuation and assessment made by the board of valuation and assessment, viz., the auditor, secretary of state, and treasurer, as established by law, valuing said franchise as of date September 15, 1893; the value of said franchise being fixed at $865,157.46, excluding therefrom the value of the real estate and personal property owned by said defendant in this State; said company being chartered and incorporated by the State of Kentucky as the Henderson Bridge Company; the defendant having been so assessed, and the tax rate being 42½ cents on each $100 in value of its franchise, of which assessment defendant was duly notified, and, demand being made for amount due, failed to pay. The answer of defendant is divided into three paragraphs, not in either, however, denying its incorporation under and by the State of Kentucky, nor that its property and franchise is located in Kentucky. Defendant says, first, that though it obtained its charter from the State of Kentucky to build this bridge, yet that it also obtained important rights, powers, faculties, franchises, and privileges from the State of Indiana; that under and by its charter from Kentucky it could only build its structure to low-water mark on the north side of the Ohio river, that being the northern boundary of the State of Kentucky. Defendant recites in this paragraph sundry provisions from the general incorporation law of the State of Indiana, as of date March 2, 1875, as amended by act of the legislature of date April 8, 1881, showing spe-
42 cially by this amendment that any foreign corporation duly incorporated under the laws of another State to build bridges over any of the streams forming the boundary line between the State of Indiana and such other State might have and enjoy all the rights, privileges, and franchises granted under and by their general laws to any home company formed and incorporated under their laws for that purpose; then reciting other provisions under the general incorporation laws of the State of Indiana, whereby it says it was fully authorized to construct, build, and operate so

much of its structure as extended and was situated within the State of Indiana, and in addition to build so much trestle and embankment and place thereon a railroad as would take trains crossing this bridge out to the highlands; and it says that without these rights, privileges, and franchises the franchise granted by authority of Kentucky is and was of little or no value. From the recitals of the law of Indiana as made, one might suppose that this company might have been incorporated under the laws of the State of Indiana had it so desired to extend and complete its structure and approach to this bridge on the Indiana side. The material defect of this plea, however, is that it does not allege that it was so incorporated under and by any law, general or special, of the State of Indiana. It only says that, being incorporated under and by the laws of Kentucky as the Henderson Bridge Company, that then it was granted certain powers and privileges under the laws of Indiana, not denying that it actually built, nor that it now owns and operates, its bridges and the approaches thereto under and by the charter and incorporation
43 of the legislature of Kentucky; but it may be further said, suppose this charter was supplemented by a similar charter by the State of Indiana, authorizing the construction of that portion of the bridge north of low-water mark of the Ohio river, and that the State of Indiana levies and collects its tax, both on the tangible property and the franchise. This would be but the exercise of a lawful and rightful authority and power. What possible excuse could this be to the defendant for refusing to pay taxes on its tangible property in Kentucky and on its franchises granted in Kentucky? It is possible that it may then obtain franchises from both States and acquire property in both and exercise its franchise powers in both and deny its duty to pay taxes to either. This part of defendant's plea is insufficient. Again, defendant says it was authorized and empowered to build and operate its bridge by permission and authority of the Congress of the United States; that Congress prescribed the dimensions and height of said bridge, and provided that when built same should be deemed a post-route; that these were important powers, franchises, and privileges, without which neither the incorporation of its company nor any franchise granted it by the State of Kentucky was of any value. It affirms in its brief the right and power of the Congress of the United States to charter companies and to grant franchises to same; to build bridges over any and all navigable streams in the United States, and cites in support of this contention the case — Luxton *v.* Bridge Co., reported — 153 U. S., 525; 14 Sup. Ct., 891. It is not necessary,
44 in order to the decision of this case, to question the power claimed nor the authority of the case quoted. The Commonwealth is not undertaking in this suit to impose or collect any tax from defendant on any franchise granted it by authority of the United States, and hence this decision has no application. The same objection lies to this part of the defendant's answer that is taken to that part of same pertaining to the State of Indiana, and that is that defendant does not affirm (as, of course, it could not truthfully) that it was in fact incorporated under and by the au-

thority of the United States or any act of Congress, or that it built its bridge under any such act of incorporation or authority, not denying, as before stated, its incorporation under and by the laws of Kentucky, and not denying the fact that under and by said act of incorporation it was created a body corporate, and from this charter it derived its powers to build, own, operate, and collect tolls on said bridge. Neither does counsel for defendant properly distinguish between rights, powers, and franchises granted by the State of Kentucky under which it built and today owns this property and the duties and burdens imposed by the Congress of the United States, but confuses these duties and burdens with grants, privileges, and franchises, in this: that while the defendant was created by the laws of Kentucky and given the rights, powers, and franchises that it enjoys in the construction of this bridge, all that the Congress of the United States undertook to do was to impose certain burdens and limitations on this power by prescribing certain rules and regulations pertaining to the building of this bridge, so that its
45 construction should in nowise interfere with the free navigation of the open river. This was quite legitimate and altogether proper and clearly within the power and duty of Congress; and, again, Congress declared that this bridge when so constructed and built should be deemed a post-route; yet neither of these things can in any just or appropriate sense be regarded rights, powers, privileges, or franchises conferred by the Government of the United States, but as burdens imposed only; so this part of the answer of defendant was also defective and wholly insufficient, and the court below should have sustained the demurrer to the first paragraph of same, embracing these items noticed.

The second paragraph of defendant's answer is as follows: "The defendant says that its bridge between the city of Henderson and the State of Indiana is used entirely for transporting interstate business—transporting passengers and freight between the States of Indiana and Kentucky. The defendant therefore insists and alleges that the imposition of a tax by the State of Kentucky upon the franchise of the defendant corporation is a tax upon its right to do interstate business and is an unlawful burden upon and an attempt upon the part of the State of Kentucky to regulate commerce between the States, in violation of that provision of the Constitution of the United States which confers powers on Congress to regulate commerce between the States." This paragraph again shows gross misapprehension on the part of defendant and its counsel of the questions involved in this case. This is a question only of
46 the right of the State of Kentucky to levy and collect of defendant a tax upon its property owned and situated exclusively in Kentucky and upon the value of its franchise as a corporation created under and by the authority of the State of Kentucky and upon a business being wholly done within the borders and limits of the State, and this tax to the same extent precisely as that assessed and levied on all other corporations created by the laws of Kentucky situated and doing business in its jurisdiction. This tax is only to the extent that the taxes of all individuals owning prop-

erty situated in Kentucky may be assessed and collected and not a farthing more. We are at a loss to see how this demand by the State of this corporation of the same tax that under the constitution and laws of the State must be paid by all other corporations has anything to do with regulating commerce between the States or how it in anywise interfered with the constitutional inhibition of any act of Congress ever passed on this subject. We apprehend that neither under this clause in reference to the regulation of commerce between the States nor under any other clause in the Constitution has Congress ever undertaken to lessen, impair, abridge, or take away the right of any State within the Federal Union to levy and collect the same rate of taxes on the property of corporations and individuals situated and resident within its boundary, though they may for the time being be engaged in commerce, that it levies upon the property of all other corporations and individuals. Certain it is that Congress has never yet un-
47 dertaken to pass such law; neither is it probable that it ever will undertake so to do, at least while its halls are filled with representatives of the people worthy, by reason of their intelligence and character, to fill such high positions; and, if such a dangerous and destructive law should be passed, what lawyer doubts that the courts of the United States would immediately declare it null and void as at once destroying the sovereign power of the States on this subject of taxation. This defendant company is not engaged in commerce or transportation at all. It has no authority or power or franchise to engage in commerce or transportation It was simply authorized to build this bridge, and when built then the railroads that may be engaged in transportation, and so indirectly engaged in commerce, may transport merchandise and passengers over its structure in consideration of a reasonable rate of toll for so doing. This is all; nothing more. This defendant, The Henderson Bridge Company, is no more—in fact not as much—engaged in commerce between the States as each and every railroad in the United States that anywhere on its line may cross from one State into another conveying freight and passengers; and if under this pretense this bridge company can be rightfully and lawfully excused from the payment of its lawful taxes to the State of Kentucky, assessed and levied, as we will hereafter demonstrate, at the same rate and estimated in the same mode or manner as that of all other taxes on corporations, then under the same pretext can the property of every railroad of the United States whose line at any place extends from one
48 State into another and who is thus necessarily engaged in transporting freight and passengers from one State into another be likewise exempted from taxation. We deem this proposition incontrovertible, and simply to state it is to show the utter shallowness and fallacy of the pretext by and under which this defendant corporation seeks to shield and protect itself from its just and lawful share of the public burden. In this case the property upon which this tax has been assessed, being only that portion of its structure that extends to the low-water mark on the north side

of the Ohio river, is as much within the territorial limits of the State of Kentucky as if it were situated at the geographical center of the State, and, being so situated, is subject to the authority and lawful jurisdiction of the State to same extent as any other piece of property in the limits of the State, subject only to the constitutional inhibition that it shall in nowise obstruct the navigation of said stream. The true line was fixed by the original compact between Virginia and the Federal Government, whereby Virginia, under her right to all territory north of the Ohio, was extended to low-water mark on the north side of said stream; and this has always been recognized by both the States bordering on this stream, as well as by the Federal Government. It has never been questioned. This line—low-water mark on the north side of the Ohio river—like all other lines considered with reference to mathematical accuracy, has no element of width or space. It is as clearly and as sharply defined by its own terms as the lines between Indiana
49 and Illinois or Ohio and Michigan. This court has never questioned the right or the power of Congress to regulate commerce between the States in any and every legitimate way and manner, and yet it confesses it has but little patience with the many unwarrantable and indefensible demands constantly being presented in this court torturing and perverting this right into a protection for many derelictions of public duty. We believe, however, this is the first time that this power has been appealed to to destroy the right of taxation by the State of property situated within its territorial limits. The demurrer filed by the Commonwealth to this paragraph of the answer was properly sustained by the court below.

The only remaining questions are as to the value of the franchise of the defendant corporation and the mode and manner of assessing same, these questions being presented (rather in an argumentative way) by the third paragraph of defendant's answer. To show that the value of the franchise as fixed by the board of valuation and assessment, viz, $865,157.46, is too high, and that the mode of ascertainment adopted was erroneous, the defendant relies chiefly on this clause in the 4079th section of the Kentucky statutes: "That said board from said statement [referring to a sworn statement required to be made by the president of the company] and from such other evidence as said board may have if such corporation, company, or association be organized under the laws of this State, shall fix the value of the capital stock of the corporation, com-
50 pany, or association as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State or in the counties where situated. The remainder thus found shall be the value of its corporate franchise, subject to taxation as aforesaid." The next section, pursuing substantially the same lines of procedure, applies to corporations organized under the laws of other States and having property and doing business in this State, as well as in other States, provides for an assessment and an apportionment, and, as to the merits of this controversy, is not material; and, to speak

more definitely of defendant's contention, it depends on the meaning to be given to the words "capital stock of the corporation," found in the section quoted. This word "stock" we find used by legislatures and by different juridical writers and courts in several different senses, and that its particular meaning must generally be determined by the matters in hand, the thing in the mind of the legislator or the court, the context as well as the clause wherein it may be found. Mr. Lowell, in his work on Transfer of Stock (section 4), says: "Stock has been succinctly designated as 'the sum of all the rights and duties of the shareholder.' Again, it has been used to denote (1) the capital stock, (2) the shares of stock or of the stockholders, and (3) as being applied so as to include both. While the term 'capital stock' generally means the fund or property put in or subscribed by members of the corporate body, yet it may mean the capital put in and the accumulations of same not distributed as dividends or profits." Again, it is said that the value of the capital
51 stock is measured by that of the corporate property. An interesting description of this term "stock" or "capital stock" and what it may mean is found in case of People *v.* Coleman (N. Y. App.), 27 N. E., 818. We make the following extracts: "The capital stock of a company is one thing and that of the stockholder is another and a different thing. That of the company is simply its capital existing in money or property, or both, while that of the stockholder is representative not merely of that existing and tangible capital, but also of surplus, of dividend-earning power of franchise, and the good will of an established and prosperous business. The capital stock of the company is owned and held by the company in its corporate character. The capital stock of the stockholders they own and hold in different proportions as individuals. The one belongs to the corporation, the other to the corporators. The franchise of the company, which may be deemed its business opportunity and capacity, is the property of the corporation, but constitutes no part or element of the capital stock, while the same franchise does enter into and form a part, and a very essential part, of the shareholders' capital stock. While the nominal or par value of the capital stock and of the share stock is the same, the actual value is often widely different. The capital stock of the company may be wholly in cash or in property, or both, which may be counted and valued. It may have, in addition, a surplus consisting of some accumulated and reserved fund or of undivided profits, or both, but that surplus is no part of the capital stock. * * * But
52 the surplus does enter into and form a part of the share stock, for that represents and absorbs into its own value surplus as well as capital and the franchise in addition; so that the property of every company may consist of three separate and distinct things, which are its capital stock, its surplus, and its franchise; but these three things, several in the ownership of the company, are united in the stock of the shareholders. The share of stock covers, embraces, and represents all three in their totality, for it is a business photograph of all the corporate possessions and possibilities." In this case, while it is apparent that the court uses the term

"capital stock" of the company or corporation in its most limited sense, it yet makes it clear that the corporation—the company—in its property rights represents and embraces both capital stock, strictly so speaking, the tangible property owned by the company as well, the surplus, undivided earnings, if any, and the franchise; and while that court describes the shares of stock owned by the several individual members of the corporation as representing in interest and value all these things, yet the same things all combined constitute and are the property of the corporation or company. So again we find it said by a New York court in Barry *v.* Exchange Co., 1 Sandf. Ch., 307, "that the corporation is not limited in its ownership of property by the amount fixed as its capital stock." Again, Mr. Cook, in his work on Stock and Stockholders (section 9), says that "while capital stock is to be clearly distinguished from the amount of property owned by the corporation, yet occasionally it happens that under the terms of statutes re-
53 lating to taxation, which have been drawn without regard to the technical meaning of the words, the courts will construe the capital stock to mean all the actual property of the corporation; but this is for the purpose of carrying out the meaning of the statute and is not the real meaning of the term." Again, it is said that the property of a corporation may embrace not only the property contributed by the stockholders, but that otherwise obtained by it under its charter. See Williams *v.* Telegraph Co., 93 N. Y., 162.

Thus we see what a varied meaning this term "capital stock" may have. So that it becomes necessary to examine and see what was the object and meaning of the legislature when using this term in the clause before quoted from section 4079 of our statutes. In this examination it becomes important to notice those clauses of the constitution in reference to revenue and taxation and see what was contemplated and enjoined by that instrument in reference to taxation. Section 172 provides: "That all property not exempt from taxation by this constitution shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale." * * * Section 174 provides: "That all property, whether owned by natural persons or by corporations, shall be taxed in proportion to its value, unless exempted by this constitution, and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income,
54 licenses, or franchises." Thus it is manifest that what the constitution intended to be taxed was property—all property—and as to corporations, not only all tangible property, but that it intended to leave the legislature of the State free to tax the franchise of corporations if it so desired; that the property of a corporation should be taxed as the property of an individual. It will be observed that in these several sections quoted "capital stock," "stock," and "shares of stock" are not mentioned as being appropriate terms to designate the subjects of taxation, but it says "property," "all property," etc., so that there might be no confusion as to what that instrument intended. Neither is there any reason to sus-

pect that the legislature did not understand the language and meaning of the constitution when it came to frame the revenue laws of the State under it now under consideration. Neither is there reason to suspect that it did not intend and endeavor in good faith to carry into effect the intent and meaning of the constitution. So that we may safely interpret all words and phrases (of doubtful and uncertain meaning) in accordance with and so as to effectuate and carry out that intent.

We find that the legislature, in framing the first revenue law under this new constitution, declared that all property, both real and personal, should be assessed for taxation at its fair cash value at a fair voluntary sale, etc. We find that by section 4020 the legislature, for the purposes of taxation of corporations, divided their property into tangible and intangible, leaving the tangible
55 to be assessed by the officer of the county where the same was situated, but as to the tangible (which term was used as synonymous with "franchise") directed that that should be valued and taxed as provided in section 4077. We find by section 4077 that "every railway company or corporation, * * * bridge company, * * * as also every other corporation, company, or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town, and taxing district where its franchise may be exercised." The auditor, treasurer, and secretary of state are created a board of valuation and assessment for fixing the value of said franchise. They are to designate when this tax shall be payable and to apportion same, where more than one jurisdiction may be entitled to a share of such tax. Section 4078 gives some general directions as to how this board of valuation and assessment shall proceed to determine the value of this franchise which is to be taxed. It provides that the president or chief officer of such corporation shall, between the 15th day of September and the 1st day of October, annually, make a statement under oath showing the following facts, viz: The name, place of business, kind of business, etc., engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof;
56 the highest price at which such stock was sold at a *bona fide* sale within 12 months before the 15th day of September of the year when the statement is made; the amount of surplus fund and undivided profits and the value of all other assets; the total amount of indebtedness as principal; the amount of gross or (and) net earnings or income, including interest on investments and incomes from all other sources, within 12 months preceding the time of making the statement; the amount and kind of tangible property in this State, and where situated, assessed or liable to assessment in this State and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the auditor may require, all this indicating as clearly as it is

possible for language to indicate that the object of the legislature was that the board of valuation and assessment should thus be able to form a correct estimate of the value of the entire property of the company or corporation whose case they were investigating. Then follows the clause in section 4079, before quoted, requiring the board, from the statement and from all evidence before it, to proceed to fix the value of the capital stock (meaning the entire property) of the company or corporation, and that from the amount thus fixed they shall deduct the assessed value of the tangible property of the company or corporation assessed in the State or in the county where situated, and that the balance thus found should be the value of the corporate franchise subject to taxation as aforesaid. So that the question returns, Did the legislature mean
57 by the expression "capital stock" only the amount of money that may have been paid in by the stockholders, or did it mean to embrace and include by that term the entire property, of every kind and description, tangible and intangible, embracing not only capital stock originally paid, but all property afterwards acquired and then owned by the company, as well as any surplus undivided profits then on hand, and all other assets as well as its franchise?

In the light of the foregoing provisions of the constitution, and of the act of the legislature, and of the instructions given to the board of valuation and assessment, and of the sworn statement demanded of the president of the company, on which, with other testimony, to make this valuation, we are constrained to say that by this term "capital stock" the legislature meant to include the entire property, real and personal, tangible and intangible, assets on hand, and its franchise as well, and that, when so embraced and construed and valued as an entirety, then to take off the tangible property already assessed, and that the net balance will show and shall be the value of the franchise to be taxed under section 4077. This was the construction given to these several clauses by the board of valuation and assessment, and we entertain no doubt of its correctness. All the property of the corporation cannot be taxed in any other way. The total value of the property of this corporation was thus fixed at $2,900,000, and the evidence in the record abundantly supports the correctness of this estimate. While
58 it is true that the technical capital stock of the company was based on $1,000,000, yet under their charter they were authorized to borrow money and issue bonds in aid of the enterprise for which they were incorporated, and they did issue $2,000,000 in bonds and put the proceeds of these bonds, combining same with the $1,000,000 capital stock, in the building of their bridge and its approaches, so that they had invested in said enterprise not only the $1,000,000 stock, but proceeds of the $2,000,000 in bonds, and the evidence shows the property in its entirety is worth what it cost. But defendants argue that they should not be taxed on the debt that they owe. They are not so taxed. Of course, a debt cannot be made the subject of taxation as against the one who owes it; but, on the other hand, neither can an outstanding debt be deducted

from the value of any property in assessing same for taxation. It cannot be done in behalf of an individual; is never done; and when the constitution requires that the property (not stock or capital stock, but property) of all corporations must be taxed in the same manner as the property of an individual, then it is manifest that neither can a corporation, in an assessment of its property for taxation, obtain any credit for any debt that it may owe. This proposition we think absolutely clear. Furthermore, the board of valuation and assessment, following out the line claimed by defendant, after determining the value of the entire property of the defendant, fixing same at $2,900,000, deducted from this amount the value of said property, including the railroad and that portion of the bridge proper situ-
59 ated beyond or north of low-water mark, as shown by the evidence, and leaving as the value of the property in Kentucky the sum of $1,514,893, and this was then apportioned by deducting the value of the tangible property listed in Henderson county, viz., $649,735.54, and leaving $865,157.46 as the value of the franchise of defendant to be taxed under this proceeding. These valuations are clearly within the evidence as shown by the record. It is supported by the sworn statement of the president of the company (after correcting all mistakes in same). It may also be observed in the simple fact that the market value of the stock of the company is in the aggregate $900,000, when we know that the bonds taking precedent of the stock in the sum of $2,000,000 must be good, otherwise the stock could have no value, and thus that the property and franchise must be worth the $2,900,000. Again, it is shown that the annual gross income for the year preceding this valuation was $217,072.21, enough to pay an annual interest on both bonds and stock of more than 7 per cent., or, making another estimate, this $217,072 would pay an annual interest on the value of the tangible property as taxed in Indiana and given in to the county of Henderson of nearly 17 per cent. So that the large earning capacity of this property, based on its tangible value only, authorizes us to assume that it lies in its franchise, which is the right to charge tolls on every locomotive, freight and passenger car, ton of freight, and passenger that passes over its road, and this rate of toll is practically up to this time in the discretion of
60 the company, the legislature not having undertaken to limit or control same and make same reasonable; but it is insisted by counsel in argument that the State of Kentucky has no right to tax the franchise granted by it to this company, and they rely upon the authority of the cases of California *v.* Pacific R. Cos., 127 U. S., 40; 8 Sup. Ct., 1073. We have examined these cases and find that the facts upon which they are made to turn (the very foundation of the decision) are totally dissimilar and unlike the facts in this case, and, consequently, that however sound and correct the law announced in those cases may be (and we do not question it), it has no application to this case. Counsel for appellants copy some two pages of that decision into their brief, showing that the Federal courts refused to allow the State of California to tax

the franchise of said railroad companies. The court, after devoting many pages of that decision to a recital of the facts of the cases before it as found by the court below and as the conclusion of fact on which the decision is made to turn, says: "That if, therefore, the Central Pacific Railroad Company is not a Federal corporation its most important franchises (including that of constructing a railroad from the Pacific ocean to Ogden City) were conferred upon it by Congress." Hence the court properly concluded that the franchise of the road, being incorporated and granted by the Federal Government, was not subject to taxation by the State of California—a state of case wholly different from this case, as before shown in this opinion. Mr. Morawetz, in his work on Corporations (section 929), speaking of franchises and
61 their value, says: "Care must be taken to distinguish between the different meanings of the word 'value.' One meaning of the word is 'price' or the 'amount for which a thing can be sold.' In this sense, franchises have clearly no value whatever, because by their nature they are not transferable. They cannot be sold or leased or mortgaged, nor can they be taken under execution. On the other hand, franchises clearly have a value, if the word 'value' is used to signify the advantage derived from their possession, or, in other words, their utility. The value of a franchise, using the word 'value' in this sense, would not be measured by the cost or difficulty of obtaining the franchise or by its exclusive character, but by the benefit derived from its possession." Thus the value of the franchise in this case aptly illustrates the meaning of the author. It should be further said that the findings of this board of valuation and assessment partake of a judicial nature. The defendant had its day in court. It did appear on notice before that board and on evidence made its defense, and on this hearing that board rendered its decision in fixing the value of the franchise of defendant granted by authority of the State of Kentucky, and this finding, if not conclusive, is entitled to a very high degree of consideration and authority and it should not be lightly set aside or disregarded by the courts unless the board proceeded upon an erroneous principle or adopted an improper mode or manner of estimating the value of the franchise, or unless fraud is charged
62 and shown to exist. It is not contemplated by the law that every corporation, company, or association operating under and enjoying a franchise from the State should, simply by denying the correctness of the valuation placed on its franchise by this board, put again the whole thing in issue and have same reheard and adjudicated by the courts. It would be an inefficient system of revenue for the State if its just taxes against every such corporation, company, or association could only be collected at the end of a separate lawsuit against each. We have thus gone into the merits of this case at some length, knowing the importance of a correct interpretation of our existing revenue laws with reference to the taxation of the franchise of all corporations, companies, and associations operating under and enjoying the benefits of the same conferred by this State. The court below disregarded the finding of the board

of valuation and assessment as to the value fixed on the franchise of this defendant company, supported as it was by the only other evidence introduced on the trial of the cause, and fixed the valuation of said franchise for the purpose of taxation at the sum of $140,000 only and rendering judgment for the Commonwealth on that basis (at 42½ cents on the $100 value of same, as fixed by law) for the sum of $595. From that judgment both parties appealed. That judgment was erroneous, and on the appeal of the Commonwealth it is reversed, but affirmed on the appeal of the Henderson Bridge Company. It is now ordered that same be set aside and held for naught, and this cause is remanded for further proceedings consistent with this opinion.

63 Afterwards, to wit, on the 11th day of January, 1896, the appellant filed in the office of the clerk of the Kentucky court of appeals a transcript in words and figures following, to wit:

Franklin Circuit Court, January Term, 1896.

HENDERSON BRIDGE COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Pleas before the Hon. James E. Cantrill, judge.

Be it remembered that on the 8th day of January, 1896, the following judgment was entered and the accompanying mandate and opinion of the court of appeals filed in the Franklin circuit court, to wit:

(See next page.)

(The opinion here referred to is copied heretofore on pages 40 to 62.)

Franklin Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
HENDERSON BRIDGE COMPANY, Defendant.

64 This day came the parties, by counsel, and agreed that this court might hear and determine the motion of the Commonwealth to file the opinion and mandate of the court of appeals herein as well as the motion of the Commonwealth for a judgment on the mandate; and thereupon the Commonwealth filed the opinion and mandate of the court of appeals, the mandatory part of which is as follows:

"It is therefore considered that said judgment be affirmed on the appeal of the Henderson Bridge Company and reversed on the appeal of the Commonwealth, and the cause remanded for further proceedings consistent with the opinion herein." And thereupon, on motion of the Commonwealth, the judgment heretofore entered herein is set aside and held for naught; and it is now considered

and adjudged by the court that the Commonwealth of Kentucky recover of the Henderson Bridge Company the full amount of taxes due upon the assessment of the franchises of the company and sued for herein, to wit, $3,675.91; and it is further considered and adjudged by the court that the plaintiff, The Commonwealth of Kentucky, recover of the defendant, The Henderson Bridge Company, its costs in this behalf expended, and may have execution; to all of which the defendant excepts, and from this judgment the defendant, The Henderson Bridge Company, prays an appeal to the court of appeals, which is granted.

65 COMMONWEALTH OF KENTUCKY:

The Court of Appeals.

MAY 25TH, 1895.

HENDERSON BRIDGE CO., Appellant,
against
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from a judgment of the Franklin circuit court.

The court being sufficiently advised, it seems to them that the judgment herein is erroneous.

It is therefore considered that said judgment be affirmed on the appeal of the Henderson Bridge Co. and reversed on the appeal of the Commonwealth, and cause remanded for further proceedings consistent with the opinion herein.

Which is ordered to be certified to said court.

A copy.

Attest:

A. ADDAMS, *C. C. A.*,
By ROBT L. GREEN, *D. C.*

Issued Nov. 26, 1895.

66 Franklin Circuit Court, January Term, 1896.

I, Thos. B. Ford, clerk of the court aforesaid, do certify that the foregoing 26 pages contain a true, perfect, and complete transcript of the mandate, the opinion of the court of appeals, and the judgment in the case of The Commonwealth of Kentucky against the Henderson Bridge Company, and that these are all the proceedings had in said case since the filing of the mandate of the court of appeals.

THOS. B. FORD, *C. F. C. C.*,
By J. R. ELLIOTT, *D. C.*

On the transcript filed as aforesaid the following statement is endorsed:

Statement.

Court of Appeals of Kentucky.

HENDERSON BRIDGE COMPANY, Appellant,
vs.
COMMONWEALTH, Appellee.

The judgment appealed from herein was rendered at the January term, 1896, of the Franklin circuit court, and is copied on page 24 of this transcript.

HELM & BRUCE,
For Appellant.

67 At a court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 11th day of January, A. D. 1896, the following order was entered:

HENDERSON BRIDGE CO., Appellant,
vs.
COMMONWEALTH OF KY., Appellee. } Franklin.

Came the appellant, by counsel, and moved the court to docket, advance, and submit this cause, and the cause is submitted on the motion.

Afterwards, at a court of appeals held as aforesaid, on the 15th day of January, A. D. 1896, the following orders and judgments were entered:

HENDERSON BRIDGE COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee. } Apppeal from the Franklin Circuit Court.

The court being advised, the motion to docket and advance and submit this cause is sustained, and the cause is ordered to be docketed, advanced, and submitted; and the court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost herein expended.

On the same day the court delivered the following opinion:

68 HENDERSON BRIDGE COMPANY
vs.
COMMONWEALTH OF KENTUCKY.

The court below having entered a judgment in accordance with the opinion and mandate of this court, that judgment is now affirmed and the appeal dismissed.

Afterwards, on February 15, 1896, the appellant filed the following writ of error in said clerk's office, a copy of which remains on file in my office:

69 UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the court of appeals of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Henderson Bridge Company, appellant, and The Commonwealth of Kentucky, appellee, wherein was drawn in question the validity of a statute or constitution of or an authority exercised under said State of Kentucky on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Henderson Bridge Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in said Supreme Court, to be then and there held,
70 that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States shall be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of February, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twentieth.

[Seal District Court of the United States for Ky. District.]

THOS. SPEED,
Clerk U. S. Circuit Court, Ky. Dist.,
By HENRY F. CASSIN,
Deputy Clerk.

Allowed by—
WILL. S. PRYOR,
Chief Justice of the Court of Appeals of Kentucky.

70½ [Endorsed:] Henderson Bridge Co. *versus* Com'th of Kentucky. Writ of error. 1896, February 15, filed. Att.: A. Addams, C. C. A.

71 On the same day, to wit, February 15, 1896, the appellant filed in said clerk's office its assignment of errors and bond in words and figures following, to wit:

Supreme Court of the United States.

HENDERSON BRIDGE COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

The Henderson Bridge Company, plaintiff in error in the above-entitled cause, complains of the judgment rendered therein by the court of appeals of Kentucky, and for error therein assigns the following:

1st. The court erred in affirming the judgment of the Franklin circuit court and in sustaining the assessment sued on.

2nd. The court erred in upholding the validity of the statute of Kentucky under the authority of which the assessment was sustained, because the statute provides for the assessing of the franchise of the plaintiff in error when that franchise is so dependent upon and intermingled with a franchise granted by the United States and with a franchise by the State of Indiana as not to be separable from them, or either of them, and to be utterly worthless if separated from them or either of them.

3rd. Because the statute of Kentucky upheld and sustained by the court of appeals is a regulation of commerce between the
72 States, and as such is a violation of the Constitution of the United States.

4th. Because the statute, by imposing on some corporations heavier burdens of taxation than on others, violates the 14th amendment of the Constitution of the United States, which forbids any State to deny to any person within its jurisdiction the equal protection of the laws.

HELM & BRUCE,
Att'ys for Plaintiff in Error.

Court of Appeals of Kentucky.

HENDERSON BRIDGE COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Know all men by these presents that The Henderson Bridge Company, principal, and James P. Helm, surety, are held and firmly bound unto The Commonwealth of Kentucky in the sum of one thousand ($1,000) dollars, to be paid to the obligees herein; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 14 day of Feb'y, 1896.

Whereas the above-named Henderson Bridge Company
73 hath prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the court of appeals of Kentucky:

Now, therefore, the condition of this obligation is such that if the above-named Henderson Bridge Company shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force.

LOUISVILLE & NASHVILLE
RAILROAD COMPANY.
JAMES P. HELM.

Sealed and delivered in the presence of and approved by—

WILL. S. PRYOR,
Chief Justice of the Court of Appeals of Kentucky.

74 COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, certify that the preceding seventy-three pages contain a true and complete transcript of the record and proceedings had in said court of appeals in the case of Henderson Bridge Company, appellant, against The Commonwealth of Kentucky, appellee, on appeal from the Franklin circuit court, together with the writ of error (a copy of which is on file in my office) and copies of the assignment of errors and bond, as appears of record and on file in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office.

Seal of Kentucky Court of Appeals.

Done at Frankfort, Kentucky, this 20th day of February, 1896.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

Fee for this transcript, $25.25.

75 UNITED STATES OF AMERICA:

The President of the United States to the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Kentucky, wherein The Henderson Bridge Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done by the parties in that behalf.

Witness the Honorable William S. Pryor, chief justice of the

court of appeals of Kentucky, this 14 day of Feb'y, in the year of our Lord one thousand eight hundred and ninety-six.

WILL. S. PRYOR,
Chief Justice of the Court of Appeals of Kentucky.

I accept the service of this citation.
Feb'y 15th, 1896.

W. S. TAYLOR,
Attorney General of Kentucky.

76 [Endorsed:] Henderson Bridge Co. *versus* Com'th of Kentucky. Citation.

Endorsed on cover: Case No. 16,211. Kentucky court of appeals. Term No., 462. The Henderson Bridge Company, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed March 5th, 1896.